

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CLAUDE BOLING,

Plaintiff,

CIVIL NO: 07-11752

HONORABLE JOHN CORBETTO'MEARA
HONORABLE STEVEN D. PEPE

vs.

CORRECTIONS MEDICAL SERVICE and
TERRY A. ARNOLD

Defendants.

/

**ORDER DENYING PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT (DKT. #14)**

On August 29, 2007, Plaintiff filed his motion for default judgment against Defendant Correctional Medical Services (“CMS”) for failure to answer or otherwise pled or defend as provided by the Federal Rules of Civil Procedure (Dkt. #14). Plaintiff also filed an August 29, 2007, request for clerk’s entry of default (Dkt. #12), which was denied on August 30, 2007, pursuant to 42 U.S.C. § 1997e(g) (Dkt. #13). While Michael D. Kennedy has entered an appearance on behalf of CMS in this matter, CMS has failed to return an executed waiver of service of summons or otherwise respond to Plaintiff’s Complaint (Dkt. #10). All pre-trial matters were referred (Dkt. #2). For the reasons stated below, it is **ORDERED** that Plaintiff’s motion for default judgment is **DENIED**.

Under 42 U.S.C. § 1997e(g)(1):

Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

As Plaintiff has already been informed by the Clerk's Office in response to his motion for entry of default judgement (Dkt.#13), default judgment for failure to answer in this case would be improper because 42 U.S.C. § 1997e provides defendants in actions brought by prisoners pursuant to § 1983 with the ability to waive the right to answer and indicates "such waiver shall not constitute an admission of the allegations contained in the complaint." 42 U.S.C. § 1997e(g)(1).

While the Court "may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits,"⁴² U.S.C. § 1997e(g)(2), until such time as this happens, none of the defendants in this matter are obligated to answer the complaint. *See e.g. Stevenson v. MDOC*, 2007 WL 1202310, *1 (W.D. Mich. 2007) ("Section 1997e(g) bars plaintiff from obtaining an entry of default ... because defendants have no obligation to reply to the complaint until ordered by the court) (citations omitted).

Accordingly, it is **ORDERED** that Plaintiff's motion for default judgment is **DENIED**.

The parties to this action may object to and seek review of this Order, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b) and LR 72.1(d). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to E.D.

Mich. LR 72.1(d)(2), a copy of any objections is to be served upon the Magistrate Judge.

SO ORDERED.

Dated: August 31, 2007
Ann Arbor, MI

s/ Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

This is to certify that on August 31, 2007, I electronically filed the foregoing Scheduling Order with the Clerk of the Court using the ECF system which will send notification of such filing to the following parties: Christine M. Campbell, Michael D. Kennedy, and I hereby certify that I have mailed a copy of the Scheduling Order to the following non-ECF parties: Claude Boling #191936, Florence Crane Correctional Facility, 38 Fourth St., Coldwater, MI 49036

s/ James P. Peltier
James P. Peltier
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